

## **OFFICE OF ACQUISITION MANAGEMENT POLICY INVENTORY - 1999**

### ***HEALTH AND HUMAN SERVICES ACQUISITION REGULATION***

The Health and Human Services Acquisition Regulation (HHSAR) is codified at 48 CFR Chapter 3. It implements and supplements the Federal Acquisition Regulation (FAR). The HHSAR is revised periodically as needed. The HHSAR can be accessed on the Internet at <http://www>. We will no longer publish the HHSAR staff manual (the loose leaf version of the HHSAR) since the HHSAR can be downloaded from the Internet. The responsible staff person is Ed Lanham. He can be reached at (202) 690-7590.

### ***FUNDING ACROSS FISCAL YEARS***

An Office of Acquisition Management (OAM) memorandum dated September 14, 1994, was issued transmitting 42 CFR 3515, Performance of one-year contracts during two fiscal years. It codified language which had been in the eight previous HHS Appropriations Acts. 42 CFR 3515 states:

Funds provided in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts may be used for one-year contracts which are to be performed in two fiscal years, so long as the total amount for such contracts is obligated in the year for which the funds are appropriated.

This legislative authority permits full funding of one-year contracts or options in the year of award even for severable services. This authority is permissive and is not required. This authority is codified and remains in effect unless changed by legislation. The responsible staff person is Norman Audi.

### ***AUTHORITY TO USE APPROPRIATED FUNDS TO COVER COSTS OF NON-GOVERNMENTAL PERSONNEL ATTENDANCE AT HHS SPONSORED CONFERENCES***

An OAM memorandum dated September 9 1993 transmitted 31 U.S.C. 1345, Expenses at meetings, and several Office of General Counsel opinions. The legislation and legal opinions provide that Departmental appropriations available for salaries and expenses, shall be available for expenses of attendance at meetings which are concerned with the functions or activities of which the appropriation is made or which will contribute to improved conduct, supervision, or management of those functions or activities. This permits paying for travel, transportation, and subsistence expenses for non-governmental personnel to attend conferences provided, a nexus must exist between the meeting and the purposes of the appropriation in question or the meeting must be aimed at improving performance of the functions or activities for which the appropriation is made available. This authority is codified and remains in effect unless changed by legislation.

## ***CURRENT DOLLAR THRESHOLDS FOR ACQUISITIONS SUBJECT TO THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) AND THE TRADE AGREEMENTS ACT***

The General Services Administration (GSA), on a bi-annual basis, transmits the current dollar thresholds for acquisitions subject to the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act. Although not part of this office's policy inventory, we believe that it would be helpful to have ready access to the information; therefore, we are including the current dollar thresholds. The following thresholds are effective on January 1, 1998. The thresholds for Government acquisitions subject to the Trade Agreements Act are \$186,000 for acquisitions of supplies or services (other than construction) and \$7,143,000 for construction services. For NAFTA, the thresholds for Government acquisition are \$53,150 for acquisition of supplies or services (other than contraction) and \$6,909,500 for construction services. GSA issued the revised thresholds on January 21, 1998. These thresholds were included in Federal Acquisition Circular 97-05, on August 21, 1998. The thresholds remain in effect until revised. The responsible staff person is Norman Audi.

## ***CLASS DEVIATIONS***

The following are the current class deviations.

1. National Academy of Sciences
  1. Exemption from Synopsizing - Solicitations for requirements which will be awarded to the National Academy of Sciences (NAS) are exempt from synopsizing. The Department has obtained approval from the Office of Federal Procurement Policy (OFPP) and the Small Business Administration in accordance with FAR 5.202(b). An OGAM memorandum dated December 17, 1997 extended the waiver from synopsizing NAS contracts through October 29, 2000. The responsible staff person is Norman Audi. He can be reached at (303) 690-7326.
  2. Exemption from the Rights in Data Clause - NAS has the following class deviation which modifies FAR 52.227-14, Rights in data, General. It states:

Minutes, working papers, vote tallies, transcripts and other records of the deliberations of Academy committees are considered privileged by the contractor. The Government recognizes that this principle encourages full and free discussions at such meetings and that such frankness and openness is consistent with and beneficial to the national interest. Accordingly, the Government agrees that such material will not be ordered unilaterally by the Government.

The class deviation was approved April 15, 1994. This class deviation is permanent. The responsible staff person is Norman Audi.

3. Review of Noncompetitive Procurements with NAS - The Competition Advocate in each Operating Division (OPDIV) is responsible for reviewing all noncompetitive

procurements in excess of \$500,000 with NAS. This threshold was raised in an OGAM memorandum dated November 3, 1997. This requirement remains in effect until revised. The responsible staff person is Norman Audi.

**2. Class Waiver for Acquisition of Commercial Items**

In accordance with FAR 12.302, , Tailoring of provisions and clauses for acquisition of commercial items, the Department authorized a class waiver on March 12, 1996, for the Centers of Disease Control (CDC) for childhood vaccine contracts. The waiver is for certain previous requirements which are considered necessary to be continued in the childhood vaccine contracts. The waiver remains in effect until March 15, 1999. The responsible staff person is Norman Audi.

**3. Rights in Data -Special Works**

- A. The National Cancer Institute (NCI) in the National Institutes of Health (NIH), on October 8, 1997, has been granted a class deviation from FAR 52-227-17 (e), Rights in Data - Special Works, which requires the contractor to indemnify the Government against any liability incurred as a result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under the contract. The class deviation was authorized for those situations where acceptance of that provision would violate prohibitions contained in the state constitution of the contractors. This class deviation applies to all future NCI contracts which have similar circumstances. The responsible staff person is Norman Audi.
- B. OPDIVs are authorized, in accordance with FAR 27.405, Rights in data - Special Works, subparagraph (a)(5), to modify the clause. The subsection states:

(5) When the audiovisual or other special works are produced to accomplish a public purpose other than acquisition for the Government's own use (such as production and distribution to the public of such works by other than a Federal agency) agencies are authorized to modify the Rights in Data - Special Works clause for use in such contracts, with rights in data provisions which meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

This is a permanent authorization. The responsible staff person is Norman Audi.

**4. Patent Rights and Rights in Data**

- A. Contract awards for routine drug screening activities supporting programs within the Division of AIDS and the Division of Microbiology and Infectious Diseases in the National Institute of Allergy and Infectious Diseases (NIAID) in NIH have a class deviation from FAR 52.227-11, Patent Rights, and FAR 52.227-14, Rights in Data - General. The class deviation remains in effect until September 30, 2001. The responsible staff person is Norman Audi.

- B. Contract awards for routine screening activities for drug discovery and development activities related to drug discovery and development within the Psychoactive Drug Screening Program, supported by the National Institute of Mental Health's (NIMH) Preclinical and Clinical Therapeutics Research Branch in the Division of Basic and Clinical Neuroscience Research, have class deviations from FAR 52.227-11, Patent Rights, and FAR 52.227-14, Rights in Data - General. The class deviations remains in effect until September 30, 2001. The responsible staff person is Norman Audi.
- C. Contract awards for routine chemical synthesis and process development activities related to drug discovery and development within the NIMH's Preclinical and Clinical Therapeutics Research Branch in the Division of Basic and Clinical Neuroscience Research, have class deviations from FAR 52.227-11, Patent Rights - Retention by the Contractor (Short Form), and FAR 52.227-14, Rights in Data - General. The class deviations remains in effect until September 30, 2003. The responsible staff person is Norman Audi.

5. **Contracts with Harvard University**

The Department endorses the following clause in conjunction with FAR 52.243-2, Changes:

It is hereby agreed that all modifications to the contract will be agreed upon bilaterally. As a contractual procedure, the Changes clause may be invoked unilaterally by the Government to effect such modifications when a national medical emergency requires immediate implementation of the modifications.

The endorsement was given in May, 1989. This is a permanent endorsement. The responsible staff person is Norman Audi.

6. **Length of Contract**

A class deviation has been approved on September 1, 1998 to extend the length of contracts beyond the five year limitation in FAR 17.204(e). The class deviation is for all service contracts (including research and development). These contracts can extend for a 6period up to ten years for all service contracts not subject tot he Service Contract Act or other statutory authority restricting the option periods to a shorter time frame. The class deviation expires September 30, 2003. The responsible staff person is Norman Audi.

7. **Trade Sanctions**

NIH has been granted a class deviation from FAR 25.1002, Trade Sanctions on November 27, 1995, for NIH to contract with European Union (EU) countries for certain behavioral and biological research and development requirements as supported by the United States Trade Representative. This is a permanent deviation. The responsible staff person is Ed Lanham.